

EBF's Advocacy paper on the Commission's proposed recast of 24 June 2026 for a Council Directive 2011/16/EU on Administrative Cooperation in the field of Taxation (DAC).

The European Banking Federation (EBF) welcomes the Commission's proposal to consolidate Directive 2011/16/EU and its eight amendments into a single legal instrument. The Recast is a timely opportunity to improve legal clarity, remove low-value reporting and reduce the cumulative compliance burden borne by reporting financial institutions, while preserving effective tax transparency.

The proposal contains meaningful improvements: recalibration of DAC6, a targeted Pillar Two carve-out, deletion of Category A hallmarks, extension of the DAC6 reporting period to 90 days, a single DAC4/DAC9 notification, a future centralised TIN verification tool, and an anti-duplication provision. These measures should be retained and strengthened.

While we welcome the Commission's efforts to simplify the directive, reducing the burden on both taxpayers and tax administrators, we note that the real cost of compliance is difficult to calculate given new and duplicative tax reporting regimes often result in opportunity costs which far outweigh simple cost of systems or processes. Existing tax professionals in public and private practice are effectively re-directed towards these regimes at the cost of other projects and initiatives. Most importantly, where such regimes achieve limited policy outcomes for EU Member States - e.g. DAC 6 hallmarks which paradoxically generate myriad reporting but results in no enforcement action - it is only by wholesale removal that efficiencies are achieved across a broad spectrum of the tax professional population.

In addition, other important gaps and frictions remain. The Recast does not sufficiently distinguish regulated financial intermediaries providing routine services from those designing tax arrangements; relies extensively on later implementing acts; provides only a narrow safeguard against national gold-plating; and leaves key operational uncertainties in the Pillar Two carve-out, the TIN tool, central notification and public-register access. DAC8 is consolidated in Articles 12-14 and Annex VI but is not substantively simplified, and the proposal does not resolve potential DAC2/DAC8 double reporting for tokenised traditional financial instruments.

Core EBF messages

Simplification should be measured by the elimination of duplicate data collection, subjective assessments, divergent national rules and unnecessary system changes.

On that measure, three elements of the Recast Proposal do not yet deliver simplification for reporting financial institutions:

1. the Pillar Two exclusion creates a verification burden for intermediaries with respect to third parties and runs counter to the key policy conclusion that an entity that is part of a group subject to Pillar Two is not motivated to engage in the types of arrangements envisioned under DAC6 by virtue of the operation of the Pillar Two rules;
2. the Hallmark D2 substance criteria create a new and undefined reporting risk for financing, treasury and securitisation entities;
3. while we welcome the Commission's attempts to avoid duplication and gold-plating, it is important to bear in mind that, quite aside from the creation of additional hallmarks, subtle differences in interpretation regarding what is reportable or who must report exponentially increase the cost of compliance and uncertainty for multinational groups and tax authorities.

Commission's simplification objectives:

The Commission estimates that the proposed DAC6 simplifications could generate EUR 340 million in annual compliance-cost savings, including EUR 300 million from the Pillar Two carve-out and EUR 40 million from removing certain hallmarks, with an estimated 35% reduction in DAC6 reporting volumes. Consolidating the duplicative DAC4 and DAC9 notification obligations could save a further EUR 270 million annually, demonstrating that the greatest efficiency gains arise from eliminating overlapping reporting rather than making incremental adjustments.

Remaining concerns and gaps:

1) DAC6: proposed amendments, practical limitations and EBF position

The Recast proposes a package of DAC6 changes that should reduce some defensive and low-value reporting. In particular, Article 3(19)(f) would exclude an arrangement where each participant belongs to a qualifying group within the scope of the EU Pillar Two Directive or, for third-country groups, the OECD Model Rules. Where the ultimate parent entity is established in a jurisdiction applying a qualified side-by-side regime, the relevant participant would additionally need to be subject to a Qualified Domestic Minimum Top-up Tax (QDMTT) and no refund or direct or indirect financial benefit could be granted in relation to that tax. The proposal also refocuses the concepts of “cross-border arrangement” and “relevant taxpayer” on arrangements that are effectively capable of implementation and on the taxpayer taking the first implementation step; deletes the definitions of “marketable arrangement” and “bespoke arrangement”; removes Category A hallmarks; extends the reporting period from 30 to 90 days; starts that period at the first effective implementation step; envisages further clarification of Hallmark D2 and the main benefit test; and clarifies the transfer of reporting where legal professional privilege applies.

The Pillar Two exclusion is welcome in principle, but its design is complex and may not deliver the expected simplification in practice. It operates arrangement by arrangement and only where each participant satisfies the prescribed conditions. The concepts of “participant” and “intermediary” remain broad, while the proposal does not clearly address permanent establishments, excluded entities, joint ventures, funds, special-purpose vehicles, smaller groups or non-qualifying third-country counterparties. A bank may be able to determine its own group’s Pillar Two status, but it cannot reasonably be expected to verify another group’s QDMTT position, side-by-side eligibility or the absence of a direct or indirect related benefit. The practical scope and compliance-saving effect of the exclusion may therefore be limited or uncertain, particularly for client-facing and multi-party transactions. It should not be presented as a general exemption for banking groups subject to Pillar Two.

The practical difficulty is particularly acute where a Pillar Two group enters into a transaction with a third-party group. In an intra-group transaction, the relevant entities are generally in a position to establish whether the group is subject to Pillar Two and, where relevant, whether the applicable conditions concerning a QDMTT and related tax benefits are met. In a transaction with an unrelated counterparty, however, the Pillar Two group may need to establish the counterparty’s Pillar Two status before it can determine whether the DAC6 exclusion applies. This could arise, for example, in ordinary financing or other commercial transactions involving a third-party corporate group, where the bank or other participant has no standing or practical ability to audit or investigate the counterparty’s tax position.

A counterparty may be able to provide a self-certification, but there is currently no equivalent public source that would allow the other participants to independently verify whether a particular group falls within the scope of Pillar Two for the relevant tax period. Where a side-by-side regime applies, additional confirmation may be required as to whether the relevant entity is subject to a QDMTT and whether any refund or direct or indirect financial benefit is granted in relation to that tax. These are facts that may be

known only to the counterparty itself. The uncertainty is compounded where the relevant condition is described more broadly in the Explanatory Memorandum as requiring that no benefit lower taxation below 15%, making it unclear what precisely a taxpayer or intermediary would need to establish or certify.

This creates a particular risk that the intended carve-out will not remove the underlying DAC6 analysis in practice. DAC6 reporting is not limited to situations where a particular participant derives a tax benefit, and the exclusion is drafted by reference to whether each participant meets the prescribed conditions. If the status of a third-party participant cannot be established, the Pillar Two group may be unable to rely on the exclusion and may therefore need to assess the relevant hallmarks and, where applicable, the main benefit test. This is particularly relevant for Hallmark B2, where the conversion of income into categories taxed at a lower level may continue to require a main benefit test assessment where the third party's Pillar Two status cannot be established. Similarly, Hallmarks C2, C3 and C4 may remain relevant in transactions involving third-party groups where the conditions for the exclusion cannot be verified. The concern is therefore not limited to the administrative burden of obtaining information: uncertainty over the third party's status could materially reduce the practical value of the Pillar Two carve-out.

The exclusion is also limited by its apparent application only where each participant satisfies the relevant Pillar Two conditions. This is difficult to reconcile with the policy rationale for the carve-out: if Pillar Two is considered to remove the motivation for untoward tax planning, the exclusion should apply to a Pillar Two group irrespective of the Pillar Two status of those third parties. Those third parties and other intermediaries should remain responsible for assessing their own DAC6 reporting obligations. The EBF therefore recommends a full and clear Pillar Two carve-out for qualifying groups, irrespective of the status of other parties to the arrangement.

Any reliance on counterparty self-certification would in turn require clear legislative provisions confirming that intermediaries and taxpayers may rely in good faith on such information and establishing an appropriate safe harbour from penalties or other consequences where the information subsequently proves to be incorrect. Without such protection, the use of self-certification may itself create additional uncertainty and due diligence expectations, undermining the simplification objective of the carve-out.

This limitation of the exclusion is reinforced by Article 3(22), which retains a broad intermediary definition and does not sufficiently distinguish tax advisers or arrangement promoters from regulated banks that merely provide ordinary financing, payment, custody, safekeeping, execution or settlement services. Such institutions generally hold only partial and fragmented operational information and should not be required to reconstruct a customer's wider tax structure, conduct additional tax due diligence, aggregate information across unrelated functions and systems or audit declarations made by taxpayers and their advisers. The treatment of clear contradictory information already available in the context of the relevant engagement could also be clarified.

The Recast Proposal removes the generic Category A Hallmarks but develops the substance criteria in Hallmark D2, remitting those criteria to a Council implementing act to be adopted within five years. For the banking sector this is a material addition, not a simplification. Group treasury companies, intra-group financing entities, securitization

vehicles and fund platforms operated with limited personnel by regulatory design. Assessing them against substance criteria that will not be settled for up to five years reintroduces precisely the uncertainty the Recast Proposal is intended to remove.

The EBF therefore calls for the removal - or, at a minimum, a substantial simplification - of obsolete and low-value DAC6 reporting obligations. The Pillar Two carve-out should be simplified and supported by clear definitions and an EU-standard self-certification on which intermediaries may rely in good faith. In parallel, a role-based safe harbour should exclude ordinary regulated financial services where the institution neither designs nor markets the arrangement, provides no tax advice and has no actual knowledge, based on information readily available to the relevant service function, that a reportable arrangement is being implemented.

2) Implementing acts under Articles 43, 44 and 52

The Recast relies extensively on implementing acts for standard digital forms, linguistic arrangements, communication mechanisms, the TIN tool and the criteria for parts of Hallmark D2. Harmonised implementation is welcome, but the proposal's operational impact cannot be assessed fully until the technical rules are known. Article 52 allows up to five years for the Council implementing act on Hallmark D2, potentially prolonging legal uncertainty.

Implementing measures should specify how obligations are fulfilled, but should not expand substantive reporting scope, add data fields beyond the directive or shorten implementation periods. The EBF and representatives of other reporting sectors should be consulted before adoption, with sandbox testing, published schemas, version control, cost assessment and a lead-time of at least 18 months between final technical specifications and mandatory application where material system changes are required.

3) Gold-plating: Article 1(4) and recital 25

Article 1(4) prohibits domestic reporting obligations that substantially duplicate Chapter II information, using cumulative tests concerning substantially similar data, equivalent reporting persons and comparable timing. The deletion from recital 25 of the previous wording expressly allowing Member States to adopt further national reporting measures of a similar nature is welcome and supports the simplification objective of the Recast. This is a positive first step but may be circumvented by minor differences in data fields, frequency, format, thresholds or the designated reporting entity. Such differences can result in multiple country-specific reporting systems and undermine the benefits of an EU-wide framework, particularly for financial institutions operating cross-border.

The prohibition in Article 1(4) should therefore be broadened to capture national obligations that overlap with the substance, purpose or practical effect of DAC reporting, rather than only obligations meeting narrowly defined cumulative equivalence tests.

EU-level simplification should not create regulatory space for national-level re-fragmentation. Where information is already covered by the DAC framework, additional domestic reporting requirements should be the exception rather than the rule.

The prohibition should cover national obligations that duplicate the substance, purpose or practical effect of DAC reporting, including obligations imposed on foreign institutions operating under the freedom to provide services. A Member State proposing or maintaining an additional regime should be required to demonstrate a clearly identified

information gap that cannot reasonably be addressed through information already reported or exchanged under the DAC, as well as the necessity and proportionality of the additional obligation. Consideration should also be given to a notification mechanism allowing the Commission to assess such requirements against the simplification objectives of the Recast and the functioning of the Internal Market, before their introduction or continued application.

4) TIN verification tool under Article 36

The proposed TIN verification tool is a welcome and potentially transformative development. Beyond addressing persistent matching problems caused by incorrect, incomplete or outdated TINs, it represents the first explicit legal step towards verifying tax identification data against authoritative government sources rather than relying exclusively on taxpayer self-certifications. Under the current DAC2/CRS framework, financial institutions remain largely dependent on information provided by account holders and have only limited means to verify TINs and tax residence information directly with tax authorities. This contributes to reporting errors, remediation efforts and lower matching rates.

The tool should therefore be viewed not merely as a data-quality enhancement, but as part of a broader shift towards source-based tax identification. Together with Governmental Verification Services (GVS), European Unique Identifiers (EUIDs) and broader European digital identity initiatives, Article 36 establishes the first legal building blocks for verifying tax-related information against trusted public sources and reducing reliance on self-certifications.

The EBF therefore recommends accelerating implementation, providing free high-volume API access, harmonised response codes, timestamped evidence, correction procedures and a legal safe harbour for institutions relying in good faith on official validation results. Once tax identification or classification data has been successfully verified through an official source, reporting entities should not be required to repeatedly collect or validate substantially identical information unless contradictory information becomes available. Where a TIN verified through the official tool is found to be invalid, and the reporting financial institution has requested a valid TIN or updated self-certification and undertaken the required follow-up, the institution should not be subject to penalties solely because the account holder fails to provide the corrected information.

5) DAC4/DAC9 single notification under Article 16

The single notification directly responds to the EBF request to replace entity-level DAC4 and DAC9 notifications with a central group mechanism. Yet Article 16 requires Member States to “allow” a central notification and does not expressly displace separate domestic registrations, notifications or supplementary fields.

A valid central notification should satisfy all equivalent DAC4 and DAC9 formalities in every Member State concerned. The framework should provide one deadline, data schema, acknowledgement, correction process and penalty protection, and should prohibit parallel local notifications concerning the same filing entity and jurisdiction. Otherwise a large banking group operating across 15 Member States might find itself filing 16 notifications in the future model. Recital 62 mainly refers to the notification process, but the wording of Article 1(4) appears to cover all types of returns. With regard

to Pillar Two returns, we would support an approach under which centralised GIR filing would remove the need for a local return where no local tax is payable. Currently, some Member States require a local return even where the return is a nil return. It would be useful to add a reference to this issue in the recitals. To further reduce administrative burdens, we recommend exploring ways to minimize unnecessary repeat notifications, such as requiring notification only in the event of changes to group structure from year to year. The administrative burden could be reduced further if, instead of an annual reporting obligation, a new notification was required only when there are changes to the information relevant to the reporting obligation. However, information such as the addresses of subsidiaries should not be regarded as information relevant to the reporting obligation, as such information should already be available to local tax authorities without the need for a centralized reporting requirement.

It is also proposed that the reporting deadlines be harmonised, so that the notification would have to be submitted no later than the last day of the group's financial year. In this regard, however, The EBF considers that the deadline should be set at 6 or 12 months after the end of the financial year, in order to provide groups with sufficient time in practice to take into account transactions occurring towards the end of the financial year, such as corporate restructurings and mergers and acquisitions.

6) Once-only principle and access to AML/KYC registers

The broader definition of “available information” and Articles 38–39 promote reuse of information held by public authorities. This is positive, but the once-only principle is framed mainly as authority-to-authority reuse rather than an enforceable protection against repeated collection from taxpayers or reporting entities.

The Recast should establish that information already reported under DAC or available from a verified public register should not be requested again unless a specific and proportionate information gap is identified. Expanded access to AML/KYC information should not transform banks into tax auditors: AML data should remain factual indicators and should not require banks to certify tax residence, treaty beneficial ownership, entity classification or tax liability.

A related concern arises under Article 38(2), which would allow tax authorities to “access and search, directly and immediately, bank account information available through the bank account registers referred to in Article 16(1) of Directive (EU) 2024/1640”. It is unclear whether this provision is intended to permit such access only to the tax authorities of the Member State maintaining the register or also to tax authorities in other Member States. This should be clarified, particularly in light of the existing interconnection of bank account registers through the Bank Account Registers Interconnection System (BARIS) under Article 16(6) of Directive (EU) 2024/1640. The necessity of granting direct and immediate access should also be demonstrated, given that the bank account registers were established primarily for anti-money laundering purposes and existing administrative cooperation mechanisms are already available. If Article 38(2) is intended to permit cross-border direct access, the Recast should expressly provide for appropriate legal safeguards and oversight, including compliance with the national legal conditions governing access to bank account registers and appropriate review of the legality and proportionality of access requests.

7) Data protection and demonstrated data utility

The proposal contains GDPR, retention and breach safeguards, but also expands access to registers and permits broader reuse of information. Data minimisation should be accompanied by a data-utility discipline: new fields, uses and retention should be justified by evidence that tax administrations use the information effectively and that the expected benefit is proportionate to compliance, confidentiality and cybersecurity costs.

EBF supports the proposed KPIs and publication of information on data use. The evaluation should measure corrections, matching rates, reports removed, duplicate requests avoided and compliance-cost reductions - not merely the volume of data exchanged.

8) DAC8/CARF: consolidation without substantive simplification

DAC8 is included in the Recast in Articles 12–14 and Annex VI. The Recast therefore does not omit DAC8, but it does not introduce substantive DAC8/CARF simplification. In particular, it does not resolve the EBF concern that a traditional financial instrument recorded or transferred using DLT may be reported under both DAC2/CRS and DAC8/CARF.

The directive should be technology-neutral both in the tax qualification of the product and in the treatment of the income arising from it. The use of distributed ledger technology does not, in itself, change the legal or regulatory nature of a financial instrument: a tokenised share, bond or fund unit remains the same regulated financial instrument and should remain subject to the same reporting framework as its non-tokenised equivalent. Where equivalent information concerning the instrument, its holder and the related income is reportable under DAC2/CRS, no additional reporting should arise under DAC8/CARF solely because the instrument has been tokenised.

Tokenisation may nevertheless introduce additional participants and redistribute traditional functions across issuers, custodians, wallet or platform operators, transfer agents and other service providers. The principal difficulty is therefore to determine which participant maintains the relevant Financial Account and qualifies as the Reporting Financial Institution, particularly where new technical roles do not correspond neatly to existing DAC2/CRS categories.

The OECD CARF FAQs last updated in December 2025 added Question 6, “Digitally issued or tokenised Financial Assets”. Its decisive wording is:

OECD CARF FAQ – Question 6

“Therefore, a digitally issued or tokenised Financial Asset does not fall within the definition of Crypto-Asset under Section IV(A)(1) of the CARF and Section VIII(A)(12) of the amended CRS where such disintermediation is not possible since the asset can, for regulatory or other legal reasons, only be held by and transferred through Custodial Accounts maintained with one or more Depository or Custodial Institutions, or where the asset is an Equity Interest in a regulated Investment Entity that, for regulatory or other legal reasons, can only be registered and transferred through the Investment Entity by traditional means or a distributed ledger controlled by the issuing Investment Entity or its agent or both.”

The OECD clarification confirms that, where the stated conditions are met, a digitally issued or tokenised Financial Asset is not treated as a Crypto-Asset for CARF and amended-CRS purposes. The Recast should reflect that clarification through a technology-neutral anti-duplication rule focused on financial instruments already reported under DAC2/CRS, rather than by creating new criteria intended broadly to eliminate CARF reporting.

The Recast should establish a common, practical and technology-neutral framework ensuring that a traditional financial instrument already reportable under DAC2/CRS is not reported again under DAC8/CARF solely because it is issued, recorded, held or transferred using distributed ledger technology. This principle should be implemented through two complementary safeguards. First, securities in token form, whether native or non-native, that are held and transferred within the custody chain of a central securities depository and downstream Depository or Custodial Institutions should benefit from a rebuttable presumption that the conditions in OECD CARF FAQ No. 6 are satisfied and should remain subject to CRS rather than CARF. Second, for tokenised Financial Assets outside that clear CSD scenario, financial institutions should be entitled to rely in good faith on standardised classification information supplied by issuers, CSDs or recognised data providers, without repeating an instrument-by-instrument and jurisdiction-by-jurisdiction legal assessment. Together, these safeguards preserve the core anti-duplication principle, provide legal certainty and avoid inconsistent classifications, while not creating a broader exemption for Crypto-Assets that are properly reportable under CARF.

9) Unshell should not be revived

We understand that the Commission may be considering addressing certain substance requirements envisaged under the Unshell proposal through a Council implementing act. The recent withdrawal of the Unshell proposal was a welcome development. Should the Commission consider introducing similar substance requirements in the future, we believe these would be best addressed through a directive, providing an appropriate legislative framework and ensuring the necessary level of legal certainty.

Proposed introductions & amendments:

1) Consolidated DAC6 amendments

Proposed amendments:

- (i) preserve the deletion of Category A hallmarks and the 90-day deadline, while adopting harmonised EU guidance on the first effective implementation step, Hallmark D2, the main benefit test and the transfer of reporting where legal professional privilege applies.
- (ii) allow reliance in good faith on an EU-standard self-certification of qualifying Pillar Two status
- (iii) introduce a role-based safe harbour under Article 3(22) for regulated financial institutions providing ordinary financing, payment, execution, custody, safekeeping or settlement services where they do not design, market, organise or manage the arrangement, provide no tax advice and have no actual knowledge-based on information readily available to the relevant function-that

the arrangement is reportable. To ensure consistent application, key terms such as “ordinary regulated financial services”, “actual knowledge”, “relevant service function” and “information readily available” should be defined objectively.

- (iv) simplify Article 3(19)(f) and clarify “each participant”, the relevant testing date and the treatment of permanent establishments, excluded entities, joint ventures, funds and third-country participants;

2) Strengthening Article 1(4) on domestic duplicate reporting

Proposed amendment: Replace the current definition of “substantially duplicates” with a test covering domestic obligations that duplicate, in whole or in material part, the data, purpose or practical effect of Chapter II reporting. Member States should be required to review existing regimes, notify the Commission and provide a documented necessity and proportionality assessment.

3) Safeguards for implementing acts in Articles 43, 44 and 52

Proposed introduction: Implementing acts shall not extend the categories of reportable persons, arrangements or information established by the directive. Measures materially affecting reporting entities shall be subject to public consultation, operational testing and an adequate implementation period.

4) Reliance protection and operational standards for Article 36

Proposed introduction: A reporting entity that relies in good faith on an official validation result shall not be liable for inaccuracies attributable to the verification source. The tool should support free real-time and bulk verification, provide evidence of validation, and be capable of supporting future verification of tax residence and CRS/FATCA classifications.

5) Exclusive effect of the Article 16 central notification

Proposed introduction: A notification validly filed under Article 16 shall satisfy all equivalent DAC4 and DAC9 notification obligations for the entities and Member States identified in that notification. Member States shall not require parallel notifications or substantially similar information.

6) Cross-DAC once-only principle

Proposed introduction: Information validly reported under this Directive or available through a verified public register shall not be requested again from the taxpayer or reporting entity unless the competent authority identifies a specific information gap that cannot reasonably be addressed through existing exchanges or registers.

7) DAC2/DAC8 technology-neutrality provision

Proposed introduction: The use of distributed ledger technology to issue, record, hold or transfer a traditional financial instrument shall not, by itself, cause the instrument or transaction to be reportable under Articles 12–14 where equivalent information is reportable under Article 5. The DAC RECAST should reflect The OECD CARF FAQs last updated in December 2025 added Question 6, “Digitally issued or tokenised Financial Assets” and its decisive wording.